

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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MITCHELL J. KLEMASKE, on
behalf of himself and all
others similarly situated,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

NO. CIV. S-04-1750 FCD KJM P

MEMORANDUM AND ORDER

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This matter comes before the court on defendants' motion to dismiss plaintiff's complaint pursuant to Rule 12(b)(1) and motion for a more definite statement pursuant to Rule 12(e) of the Federal Rules of Civil Procedure.¹ For the reasons set forth below, defendants' motion to dismiss is GRANTED in part and

¹ All further references to a "Rule" are to the Federal Rules of Civil Procedure.

DENIED in part.² Defendants' motion for a more definite statement is DENIED.

BACKGROUND³

Plaintiff Mitchell J. Klemaske is a state prison inmate, currently incarcerated at the California Institute for Men ("CIM") in Chino, California. (First Am. Compl. ("FAC"), filed Nov. 9, 2005, ¶ 7). Plaintiff is a nonviolent offender who is qualified to live in Level I housing and to participate in the Conservation Camp Program. (Id. ¶ 14). Plaintiff also has a psychiatric disability. (Id. ¶ 7).

Plaintiff brings this action under the Americans with Disabilities Act ("ADA"), the Rehabilitation Act ("RA"), and California Government Code § 11135. Plaintiff alleges that defendants have "adopted, implemented, ratified, and/or failed to abolish unnecessary and discriminatory policies, practices, and procedures affecting the inmates with psychiatric disabilities." (Id. ¶ 15). Specifically, plaintiff asserts that he was unnecessary excluded or screened out from placement in the Conservation Camp Program and excluded from Level I housing assignments. (Id.) As a result of this alleged discrimination, plaintiff was denied equal access to prison programs, services, and activities. (Id. ¶ 16). Plaintiff also asserts that the alleged discrimination afforded him less advantageous credit earning status. (Id. ¶¶ 30, 36, 43). As a result, plaintiff

² Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

³ The facts of this case are taken from plaintiff's allegations in the complaint.

1 seeks "an order granting such other injunctive relief as may be
2 appropriate," declaratory relief, compensatory damages, costs and
3 attorneys' fees, and such other relief as the court deems just
4 and proper.

5 Defendants filed a motion to dismiss pursuant to Rule
6 12(b)(1) on November 23, 2005. Defendants contend that this
7 court does not have jurisdiction over plaintiff's claims because
8 they necessarily affect the length of plaintiff's incarceration.
9 Defendants also filed a motion for a more definite statement
10 pursuant to Rule 12(e), arguing that plaintiff's complaint should
11 allege which major life activity has been affected by plaintiff's
12 alleged disability.

13 **STANDARD**

14 **A. Rule 12(b)(1): Subject Matter Jurisdiction**

15 Lack of subject matter jurisdiction may be asserted by
16 either party or the court, *sua sponte*, at any time during the
17 course of an action. Fed. R. Civ. P. 12(b)(1). Once challenged,
18 the burden of establishing a federal court's jurisdiction rests
19 on the party asserting the jurisdiction. See Farmers Ins. Exch.
20 v. Portage La Prairie Mut. Ins. Co., 907 F.2d 911, 912 (9th Cir.
21 1990). There are two forms of 12(b)(1) attacks on subject matter
22 jurisdiction: facial and factual attacks. See Thornhill Publ'g
23 Co. v. General Tel. & Elecs. Corp., 594 F.2d 730, 733 (9th Cir.
24 1979). In an action such as this, where defendant contends that
25 the lack of federal jurisdiction appears from the "face of the
26 complaint," the allegations in the complaint are taken as true
27 for the purposes of the motion. Id.

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B. Rule 12(e): More Definite Statement

A motion for a more definite statement should not be granted unless a pleading is "so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." Fed. R. Civ. P. 12(e). This liberal standard is consistent with Fed. R. Civ. P. 8(a)(2) which allows pleadings that contain a "short and plain statement of the claim." The Rules anticipate that the parties will familiarize themselves with the claims and ultimate facts through the discovery process. See Famolare, Inc. v. Edison Brothers Stores, Inc., 525 F. Supp. 940, 949 (E.D. Cal. 1981). Indeed, "where the information sought by the moving party is available and/or properly sought through discovery, the motion should be denied." Id.

ANALYSIS

A. Motion to Dismiss for Lack of Jurisdiction

Defendants contend that the court lacks jurisdiction over this case because plaintiff is challenging the length of his confinement. In Preiser v. Rodriguez, the Supreme Court held that

when a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.

411 U.S. 475, 500 (1973). In Preiser, the respondents were state prisoners who were deprived of good-conduct-time credits by the New York State Department of Correctional Services as a result of disciplinary proceedings. Id. at 476. The prisoners brought suit under 42 U.S.C. § 1983, alleging that their due process

1 rights had been violated when their credits were revoked. Id.
2 In each respondent's case, the restoration of good-conduct-time
3 credits entitled the prisoner to immediate release on parole.
4 Id. at 479-81. However, the Court stated that "even if the
5 restoration of the respondents' credits would not have resulted
6 in their immediate release, but only in their shortening the
7 length of their actual confinement in prison, habeas corpus would
8 have been the appropriate remedy." Id. at 487.

9 Plaintiff asserts that the Court's holding in Preiser does
10 not apply to this case because his claims do not *necessarily*
11 affect the length of his confinement. Plaintiff also argues that
12 it is well established that the ADA applies to state prisons.
13 Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206
14 (1998). Defendants do not dispute that a state prisoner can sue
15 for prospective relief or monetary relief under the ADA. Rather,
16 defendants argue that if plaintiff prevails, the retroactive
17 award of credit that was not initially given would necessarily
18 affect the length of plaintiff's term of imprisonment.

19 In Yeskey, as well as subsequent Ninth Circuit opinions, the
20 issue of whether reinstatement of past good-time credit that
21 would shorten a prisoner's sentence was not directly addressed.
22 See Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002)
23 (plaintiffs seeking prospective relief only); Lee v. City of Los
24 Angeles, 250 F.3d 668, 690-92 (9th Cir. 2001) (remanding to give
25 plaintiffs opportunity to amend ADA claim). However, without an
26 explicit exception for the reinstatement of good-time credits
27 pursuant to an ADA, RA, or state disability claim, the mandate of
28 the Supreme Court in Preiser is clear and must be followed by the

1 court. Where a prisoner seeks a determination that he is
2 entitled to a speedier release and requests injunctive relief
3 granting or reinstating past good-time credit, the exclusive
4 federal remedy is a writ of habeas corpus. See Preiser, 411 U.S.
5 at 500.⁴

6 In his complaint, plaintiff requests injunctive relief, but
7 does not enumerate what specific relief he seeks. Therefore, to
8 the extent that plaintiff seeks the court to order the award of
9 past good time credit, defendants' motion is GRANTED. However,
10 to the extent that plaintiff seeks prospective injunctive relief,
11 declaratory relief, or monetary relief, defendants' motion is
12 DENIED.

13 **B. Motion for a More Definite Statement**

14 Defendants request the court to order plaintiff to provide a
15 more definite statement because plaintiff's complaint "fails to
16 allege any facts indicating that he does in fact have a
17 disability." (Def.'s Mot., filed Nov. 23, 2005, at 5).
18 Plaintiff's complaint need only contain "a short and plain
19 statement of the claim showing that the pleader is entitled to
20 relief." Fed. R. Civ. Proc. 8(a)(2); Swierkiewicz v. Sorema
21 N.A., 534 U.S. 506, 508 (2002). "[U]nder a notice pleading
22 system, it is not appropriate to require a plaintiff to plead
23 facts establishing a prima facie case." Swierkiewicz, 534 U.S.
24 at 511. Rather, the complaint must simply "give the defendant
25 fair notice of what the plaintiff's claim is and the grounds upon
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27 ⁴ The Preiser Court made no finding that this holding was
28 in any way limited to actions brought pursuant to 42 U.S.C. §
1983.

1 which it rests.'" Id. at 512 (quoting Conley v. Gibson, 355 U.S.
2 41, 47 (1957)). The liberal notice pleading standard "relies on
3 liberal discovery rules and summary judgment motions to define
4 disputed facts and issues and to dispose of unmeritorious
5 claims." Id. A motion for a more definite statement should not
6 be granted unless a pleading is "so vague or ambiguous that a
7 party cannot reasonably be required to frame a responsive
8 pleading." Fed. R. Civ. P. 12(e).

9 Plaintiff's complaint alleges that he has a psychiatric
10 disability as defined by the ADA and the RA. This, in addition
11 to the other facts alleged by plaintiff, is sufficient to put
12 defendants on notice of the grounds for plaintiff's claims.
13 Plaintiff's failure to identify the major life activity affected
14 by his disability does not render the complaint so vague or
15 ambiguous that defendant could not reasonable frame a responsive
16 pleading. As such, defendants' motion for a more definite
17 statement is DENIED.

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CONCLUSION

For the foregoing reasons, defendants' motions are GRANTED in part and DENIED in part. To the extent that plaintiff's claims seek an award of past good-time credit, defendants' motion is GRANTED and plaintiff's claim is dismissed for lack of jurisdiction. To the extent that plaintiff's claims seek prospecting injunctive relief, declaratory relief, or monetary relief, defendant's motion to dismiss is DENIED. Defendants' motion for a more definite statement is DENIED.

IT IS SO ORDERED.

DATED: February 1, 2006

/s/ Frank C. Damrell Jr.
FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE